

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-10-SE-149
)	
)	Acct. No. 201232100006
Carrier Coach Inc.)	
)	FRN 0003409232
)	

ORDER

Adopted: December 5, 2011**Released: December 6, 2011**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau ("Bureau") and Carrier Coach Inc. ("Carrier Coach"). The Consent Decree terminates an investigation initiated by the Bureau regarding Carrier Coach's compliance with section 301 of the Communications Act of 1934, as amended,¹ and sections 1.903(a) and 1.949(a) of the Commission's rules,² pertaining to the operation of a wireless radio station without Commission authority and the failure to file a timely renewal application for a wireless radio station.

2. The Bureau and Carrier Coach have negotiated the terms of a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Carrier Coach possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,³ and sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a), 1.949(a).

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Allen H. Miller, President, Carrier Coach Inc., 271 Buffalo Street, Gowanda, New York 14070-1096.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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Carrier Coach Inc.)	Acct. No. 201232100006
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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Carrier Coach Inc., by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of section 301 of the Communications Act of 1934, as amended,⁵ and sections 1.903(a) and 1.949(a) of the Commission's rules,⁶ pertaining to the operation of a wireless radio station without Commission authority and the failure to file a timely renewal application for a wireless radio station.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Carrier Coach" means Carrier Coach Inc., and its subsidiaries as well as its predecessors-in-interest and its successors-in-interest.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Carrier Coach is subject by virtue of its business activities, including but not limited to, the Licensing Rules.
 - (g) "Compliance Plan" means the compliance obligations and compliance program described in this Consent Decree at paragraph 9 hereof.

⁵ 47 U.S.C. § 301.

⁶ 47 C.F.R. §§ 1.903(a); 1.949(a).

- (h) “Covered Employees” means all employees and agents of Carrier Coach who perform, or supervise, oversee, or manage the performance of, duties that relate to Carrier Coach’s responsibilities under the Licensing Rules.
- (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (j) “Licensing Rules” means section 301 of the Act, sections 1.903(a) and 1.949(a) of the Rules, and other Communications Laws that prohibit the use or operation of a wireless radio station without a valid authorization or in a manner inconsistent with such authorization.
- (k) “Investigation” means the investigation commenced by the Bureau’s May 2, 2011 letter of inquiry⁷ regarding whether Carrier Coach violated sections 1.903(a) and 1.949(a) of the Rules.
- (l) “Parties” means Carrier Coach and the Bureau, each of which is a “Party”.
- (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Carrier Coach to implement the Compliance Plan.
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Section 301 of the Act⁸ and section 1.903(a) of the Rules⁹ prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by wireless radio stations except under and in accordance with an authorization granted by the Commission. Additionally, section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations “no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.”¹⁰ Absent a timely filed renewal application, a wireless radio station license automatically terminates.¹¹

⁷ See Letter from John D. Poutasse, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Carrier Coach Inc. (May 2, 2011).

⁸ 47 U.S.C. § 301.

⁹ 47 C.F.R. § 1.903(a).

¹⁰ 47 C.F.R. § 1.949(a).

¹¹ 47 C.F.R. § 1.955(a)(1).

3. Carrier Coach holds three Private Land Mobile Radio Service (“PLMRS”) licenses for the operation of a wireless radio communications service for livery services with the following call signs: WNVC660 (Frewsburg, NY); WPCP419 (Dunkirk, NY); and WQEQ315 (Dayton, NY).¹² Carrier Coach previously held a license for PLMRS station WNUA273 (Buffalo, New York), which expired on August 10, 2005 and was cancelled on January 7, 2006. On February 19, 2010, the Commission’s Wireless Telecommunications Bureau (“WTB”) contacted Carrier Coach and informed the company that the license for WNUA273 had expired and that Carrier Coach was operating without a license. On February 22, 2010, Carrier Coach filed an application with the Commission for a new authorization for the same Buffalo, NY service area that was covered by its expired license.¹³ However, due to the need for Canadian coordination and technical issues associated with the company’s proposed antennae, Carrier Coach amended its application on March 3, 2010, April 10, 2010 and July 22, 2010. WTB ultimately dismissed the application on technical grounds on October 9, 2010.¹⁴ On September 23, 2010, Carrier Coach submitted an application for Special Temporary Authority (“STA”) to provide PLMRS in the Buffalo service area under call sign WQMM777.¹⁵ The STA was granted on September 27, 2010 and expired on March 26, 2011.¹⁶ After granting Carrier Coach’s STA request, WTB referred this matter to the Bureau for investigation and possible enforcement action.

4. On May 2, 2011, the Bureau issued the letter of inquiry (“LOI”) to Carrier Coach.¹⁷ The LOI directed Carrier Coach to submit a sworn written response to a series of questions relating to Carrier Coach’s compliance with the Commission’s Licensing Rules. Carrier Coach responded to the LOI on May 5, 2011.¹⁸ In its response to the LOI, Carrier Coach stated that it vacated WQMM77 prior to the expiration of the STA and elected instead to contract with a third party for the shared use of the third party’s licensed mobile radio communications system to support Carrier Coach’s business operations in the Buffalo service area. The Bureau and Carrier Coach executed a Tolling Agreement on September 7, 2011.¹⁹

¹² See File Nos. 0002436103 (filed January 6, 2006, granted January 14, 2006); 0001353826 (filed June 19, 2003, granted, June 20, 2003); 0002460676 (filed January 26, 2006, granted March 23, 2006). All of the stations are licensed to Carrier Coach Inc.

¹³ See File Nos. 0004132940 (filed February 22, 2010, application returned March 3, 2010, amendment received March 22, 2010, application returned April 10, 2010, amendment received June 7, 2010, application returned July 21, 2010, application dismissed October 09, 2010).

¹⁴ *Id.*

¹⁵ See File Nos. 0004396202 (filed Aug. 20, 2008, granted September 27, 2010); STA call sign WQMM777 (Buffalo, NY).

¹⁶ A petition to deny and reconsideration of the STA grant was filed on behalf of FM Communications, Inc on March 15, 2011 but was dismissed as moot on June 9, 2011.

¹⁷ See *supra* note 3.

¹⁸ See Letter from Robert Dunmire III, Carrier Coach, Inc. to John D. Poutasse, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (May 5, 2011).

¹⁹ See Tolling Agreement, EB-10-SE-149, by and between John D. Poutasse, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Allen H. Miller, President, Carrier Coach Inc. (September 7, 2011).

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

6. **Jurisdiction.** Carrier Coach agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date, as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Carrier Coach agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Carrier Coach concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Carrier Coach with respect to Carrier Coach's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, Carrier Coach agrees that it shall within sixty (60) calendar days after the Effective Date develop and implement a Compliance Plan to help ensure future compliance with the Communications Laws, including the Licensing Rules, and with the terms and conditions of this Consent Decree. The Compliance Plan shall include, without limitation, the following components:

- (a) **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Carrier Coach shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Carrier Coach complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Agreement, the

Compliance Officer shall have specific knowledge of the Licensing Rules prior to assuming his/her duties.

- (b) **Operating Procedures on Licensing Rules.** Within sixty (60) calendar days after the Effective Date, Carrier Coach shall establish Operating Procedures that all Covered Employees must follow to help ensure Carrier Coach's compliance with the Licensing Rules. As part of its Operating Procedures, the Compliance Officer shall designate a Covered Employee to be responsible for developing and maintaining a database of all FCC licenses held by Carrier Coach and the expiration date of each such license. The Compliance Officer shall ensure that Carrier Coach timely files an application for renewal for any FCC license that Carrier Coach intends to operate after the license's expiration date.
- (c) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Licensing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Carrier Coach's compliance with the Licensing Rules. Carrier Coach shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Carrier Coach shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (d) **Compliance Training Program.** Carrier Coach shall establish and implement a Compliance Training Program on compliance with the Licensing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Carrier Coach's obligation to report any non-compliance with the Licensing Rules under paragraph 10 of this Consent Decree and shall be instructed on how to disclose non-compliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Carrier Coach shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (e) **Termination Date.** Unless stated otherwise, the requirements of this paragraph 9 of the Consent Decree shall expire twenty-four (24) months after the Effective Date.

10. **Reporting Non-Compliance.** Carrier Coach shall report any non-compliance with the Licensing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days

after the discovery of such non-compliance. Such reports shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that Carrier Coach has taken or will take to remedy such non-compliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Carrier Coach has taken or will take to prevent the recurrence of any such non-compliance. All such reports of non-compliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-C366, Washington, D.C. 20554, with a copy submitted electronically to Josh Zeldis at Josh.Zeldis@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov. The reporting obligations set forth in this paragraph 10 shall expire twenty-four (24) months after the Effective Date.

11. **Compliance Reports.** Carrier Coach shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date and twenty-four (24) months after the Effective Date.

- (a) Each compliance report shall include a detailed description of Carrier Coach's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Licensing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Carrier Coach, stating that the Compliance Officer has personal knowledge that Carrier Coach (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of non-compliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 10 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with section 1.16 of the Rules²⁰ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Carrier Coach, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of non-compliance; (ii) the steps that Carrier Coach has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Carrier Coach has taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Josh Zeldis at Josh.Zeldis@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

12. **Voluntary Contribution.** Carrier Coach agrees that it will make a voluntary contribution to the United States Treasury in the amount of eleven thousand dollars (\$11,000). The payment must be made within thirty (30) calendar days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order.

²⁰ 47 C.F.R. § 1.16.

Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Carrier Coach must also send electronic notification to Josh Zeldis at Josh.Zeldis@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov on the date said payment is made.

13. **Waivers.** Carrier Coach waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Carrier Coach shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Carrier Coach nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and Carrier Coach shall waive any statutory right to a trial *de novo*. Carrier Coach hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

14. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

15. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Carrier Coach does not expressly consent), that provision will be superseded by such Rule or Commission order.

16. **Successors and Assigns.** Carrier Coach agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

17. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

18. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

19. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

20. **Authorized Representative.** The individual signing this Consent Decree on behalf of Carrier Coach represents and warrants that he is authorized by Carrier Coach to execute this Consent Decree and to bind Carrier Coach to the obligations set forth herein. The FCC signatory represents that she is signing this agreement in her official capacity and that she is authorized to execute this Consent Decree.

21. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Allen H. Miller
President
Carrier Coach Inc.

Date